In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 352

DISTRICT LODGE NO. 15 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, AND PENN CORK & CLOSURES, INC., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 13-20) is reported at 376 F. 2d 52. The Board's findings of fact, conclusions of law, and order (App. 1-10)[1] are reported at 156 NLRB 411.

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[1] "App." refers to the Appendix to the Board's brief in the court of appeals, copies of which have been filed with the petition.

JURISDICTION

The decree of the court of appeals (Pet. 21-22) was entered on April 26, 1967. The petition for a writ of certiorari was filed on July 11, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the National Labor Relations Board properly found that by continuing to deduct union dues pursuant to checkoff authorizations, after the employees in a Board-conducted election had deauthorized the union shop and had requested the employer to cease making such deductions, the employer assisted the union and interfered with employee rights, in violation of the National Labor Relations Act.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at pp. 23-26 of the petition.

STATEMENT

Petitioners ("the Union" and "the Company") were parties to a collective bargaining contract, which contained a union-security provision requiring membership in the Union as a condition of continued employment. The agreement required the Company to discharge any employee delinquent in his Union

dues "within three (3) working days after receipt of notice from the Union" (App. 4; 22-23). The Company also agreed to deduct "dues" and remit them to the Union in accordance with employee authorizations (App. 4; 23).

In October and November, 1964, some of the Company's employees executed checkoff authorizations, directing the Company to deduct five dollars from their wages each month as Union membership dues. The checkoffs were in the form specified in the contract and permitted under Section 302(c)(4) of the Labor Management Relations Act (Pet. 26): they were, by their terms, irrevocable for one year, or "up to" the termination date of the current collective bargaining agreement, whichever occurs sooner.[2] Thereafter, they were revocable only by notice in writing given during a 15-day period after the passage of a year or the termination date of the collective bargaining agreement (App. 3-4; 24-25).

On January 5, 1965, a group of Company employees filed a petition with the Board seeking to withdraw the authority of the Union to require membership as a condition of employment in the contract unit (App. 4; 14-15, 25).[3] An election was held on January 29, 1965, and, on February 6, the Board is-

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[2] The original contract by its terms expired on December 31, 1964, but, on December 30, the Company and the Union entered into a new agreement, with identical union-security and checkoff provisions, effective from January 1, 1965 to December 31, 1967 (App. 4; 25).

[3] Section 9(e)(1) of the Act, which provides for such a petition, is set forth at Pet. 25.

sued a certification that a majority of the employees cast their ballots in favor of deauthorization (*ibid.*). On February 25, a petition signed by 57 employees was delivered to the Company and the Union stating that the signers resigned from the Union as of that date, and that "no dues shall be deducted from our wages" (App. 4-5; 25-26). Nevertheless, the Company continued to deduct dues pursuant to the previously received authorization as requested by the Union, and to hold them in a special fund (App. 5; 27-28).

The Board concluded that, when checkoff authorizations are executed under a contract containing a union-security provision, "it would be unreasonable to infer that all employees who authorized the checkoff would have done so apart from the existence of the union-security provision * * *, or to infer that these same employees would * * * wish to continue their checkoff authorizations even after the union-security provision was inoperative." The Board added that, "when there has been an affirmative deauthorization vote, outstanding checkoff authorizations originally executed while a union-security provision is in effect become vulnerable to revocation regardless of their terms. The right of a majority of the employees to withdraw union shop authority would indeed be an empty one if individually they could not thereafter cease paying union dues upon resigning from membership" (App. 6). The Board

therefore held that the Company, by its continued deduction of union dues, interfered with, restrained and coerced its employees in the exercise of their right to refrain from assisting a labor organization, in violation of Section 8(a)(1) of the Act, and rendered unlawful assistance and support and contributed financial support to a labor organization, in violation of Section 8(a)(2) (App. 7). The Board's order requires the Company, *inter alia*, to reimburse the employees who resigned from the Union on February 25, 1965, for the dues deducted from their pay, and to post appropriate notices (App. 8-10).

The court of appeals sustained the Board's conclusions, and enforced its order in full (Pet. 20).

ARGUMENT

Since the decision of the court of appeals is correct, and there is no conflict among the circuits, there is no reason for further review.

1. Contrary to petitioner's contention (Pet. 8-10), the Board's holding that checkoff authorizations obtained under the aegis of a union-security provision will be presumed to be attributable to the compulsion of that provision and thus revocable by the employees when the union-security provision is deauthorized, is consistent with and effectuates the policies of the Act.

Under the Taft-Hartley Act, Congress prohibited an employer and a union from executing a union-security agreement until a majority of the employees had indicated their approval in a secret Board election (61 Stat. 136, 141, 144-145). Thus the Board

was called upon to hold thousands of elections, almost all of which resulted in employee approval. 14th Annual Report, National Labor Relations Board, p. 6 (1949). In 1951, Congress authorized employers and unions to execute union-security agreements without prior authorizations from the employees. But in order "to safeguard employees against subjection to union shop agreements which a majority disapproves" (S. Rep. 646 on S. 1959, 82nd Cong., 1st Sess., p. 1), the Board was required to conduct an election on the petition of 30 percent of the employees in the unit to determine whether the union's authority to enter into such an agreement should be rescinded (65 Stat. 601-602; Section 9(e)(1), Pet. 25). As the legislative history makes clear, Congress intended the 1951 amendment to effect substantial economies in the Board's operating procedures, but not to alter its earlier determination that union-security contracts should be conditioned on their approval by a majority of the employees affected (see S. Rep., *supra*).

In effectuating this congressional intent, the Board has long held that deauthorization under Section 9(e)(1) immediately terminates the union-security provision, even though the contract otherwise remains in force. *Great Atlantic & Pacific Tea Company*, 100 NLRB 1494; *Andor Company, Inc.*, 119 NLRB 925; *Monsanto Chemical Company*, 147 NLRB 49. The Board's view that, when the union-security provision is deauthorized, the employees may also elect to terminate any checkoff authorizations given while the union-security provision was in effect, likewise effec-

tuates "the Congressional purpose of Section 9(e)(1) not to impose a union-security agreement upon an unwilling majority * * *" (App. 7).

Where a union shop exists under the authority of Section 8(a)(3) (Pet. 24-25), it is logical to infer that employees authorizing dues checkoffs do so under its influence. As the court below noted, this inference "is particularly compelling where, as here, the collective bargaining agreement obliges the company to dismiss a worker within three days of being notified by the union of his failure to maintain his good standing; under such an agreement an employee is likely to authorize a dues checkoff for fear that without it he may forget to make the payments and risk dismissal for failure to pay union dues" (Pet. 15-16).[4] In these circumstances, the freedom to rescind the union-security clause which Congress provided under Section 9(e)(1) would be of little benefit if it did not also carry with it relief from continued payment of union dues, very likely the principal reason why workers would seek rescission in the first place.

2. *Local 60, United Brotherhood of Carpenters* v. *National Labor Relations Board*, 365 U.S. 651, in which the Court held that the Board could not order reimbursement of dues paid by members to a union

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[4] That the union-security clause did influence the checkoff authorizations here is shown by the fact that the employees executed the authorizations for checkoff of union dues while subject to the union-security contract, but resigned from the Union and sought to revoke the checkoff within a few days after they were released from their obligation to remain members as a condition of employment.

found to be unlawfully maintaining an agreement which established closed-shop preferential hiring conditions, is not to the contrary. There the Court found that all the employees affected by the order had been union members *before* the unlawful clause was enacted and there was no evidence that any of them *retained* their membership out of fear of retaliatory measures. Thus the Court held that "where no membership in the union was shown to be influenced or compelled by reason of any unfair practice, no 'consequences of violation' are removed by the order compelling the union to return all dues and fees collected from the members." 365 U.S. at 654-655. Here, on the other hand, the Board's order requires reimbursement only of funds wrongfully withheld after February 25, 1965 from the employees who on that date attempted to revoke their dues checkoff authorization.

Nor is there substance to petitioner's contention (Pet. 8-9) that, since the checkoff authorizations conformed to the requirement of Section 302(c)(4) of the Labor Management Relations Act (Pet. 26), the Board lacked authority to find that their continued maintenance was an unfair labor practice. As the court below held, "Congress' determination that only certain checkoff arrangements should give rise to criminal penalties, § 302(d), or be enjoinable, § 302(e), did not immunize all others from scrutiny under § 8 by the agency given responsibility for carrying out the declaration of policy in § 1" of the National Labor Relations Act (Pet. 16).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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